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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY REDIX,

Defendant and Appellant.

B210341

(Los Angeles County
Super. Ct. No. GA044579)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Dorothy L. Shubin, Judge. Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan D.
Martyne and Robert M. Snider, Deputy Attorneys General, for Plaintiff and Respondent.

Anthony Redix pleaded no contest to nine felony charges including two counts of first degree robbery, three counts of forcible rape while acting in concert and two counts of sodomy with force while acting in concert and admitted he was armed with or used a firearm while committing the offenses. Pursuant to a negotiated agreement Redix was sentenced to an aggregate state prison term of 40 years; four additional felony charges were dismissed in the interests of justice (Pen. Code, § 1385).

The offenses with which Redix was charged occurred in December 1994. A “John Doe” felony complaint with a deoxyribonucleic acid (DNA) profile of the suspect was filed on November 30, 2000; and on December 5, 2000, nine days before the six-year statute of limitations for the offenses would expire, a John Doe arrest warrant with a DNA profile was issued.

Redix was identified as the perpetrator by an informant in August 2004. Following additional investigation, including obtaining a DNA sample from a paper coffee cup that Redix had thrown away and comparing that sample to samples from the crime scene, an amended felony complaint was filed on August 2, 2006 that named Redix.

Redix’s motion to dismiss the case because the statute of limitations had run on the charged offenses was denied. He thereafter entered into a plea agreement and, following sentencing and entry of judgment, filed a timely notice of appeal. The notice of appeal, apparently prepared by Redix’s trial counsel but filed by Redix in propria persona, did not request a certificate of probable cause; and no certificate was obtained from the trial court.

On appeal Redix argues the judgment should be reversed because the prosecution was initiated after the statutes of limitations for the charged offenses had expired in violation of his right to due process guaranteed by the federal and California Constitutions. Specifically, Redix contends the use of a John Doe DNA arrest warrant to timely commence a criminal action improperly attempts to circumvent the statute of limitations and denies a defendant due process of law. He also asserts an unknown

suspect's DNA profile does not satisfy the constitutional and statutory "particularity" requirement for an arrest warrant.

In addition to arguing use of an arrest warrant that identifies the perpetrator only by his or her unique DNA profile properly commences a criminal prosecution, the People contend Redix's appeal must be dismissed because he failed to obtain a certificate of probable cause to appeal. (See, e.g., *People v. Smith* (1985) 171 Cal.App.3d 997, 1001 [appeal based on statute of limitations not cognizable because appellant failed to obtain certificate of probable cause; the fact "the statute of limitations is jurisdictional does not mean that the issue may be raised on appeal *without compliance with Penal Code section 1237.5*"].) Recognizing the potential vulnerability of his appeal on this ground, Redix has also filed a petition for writ of habeas corpus (B215754), arguing his trial counsel rendered ineffective assistance by failing to request a certificate of probable cause with the notice of appeal he drafted for Redix and repeating his substantive challenge to the propriety of a John Doe DNA arrest warrant.

After briefing had been completed in Redix's appeal, the Supreme Court decided *People v. Robinson* (2010) 47 Cal.4th 1104 (*Robinson*), holding that a John Doe arrest warrant identifying a suspect only by DNA profile satisfies constitutional and statutory requirements for the issuance of a valid arrest warrant and that a prosecution is timely commenced by the filing of a John Doe DNA arrest warrant within the prescribed limitations period. The Supreme Court specifically held an unknown suspect's unique DNA profile satisfies the particularity requirement for arrest warrants imposed by statute and the federal and California Constitutions: "[F]or purposes of identifying 'a particular person' as the defendant, a DNA profile is arguably the most discrete, exclusive means of personal identification possible.'" (*Id.* at p. 1134.)

In response to this court's invitation to counsel to address the impact of the decision in *Robinson, supra*, 47 Cal.4th 1104 on Redix's direct appeal and petition for writ of habeas corpus, counsel for Redix filed a supplemental letter brief conceding the *Robinson* decision fully resolves the substantive issue raised in the appeal (putting aside

the question whether the failure to obtain a certificate of probable cause bars the appeal) and acknowledging this court is obligated to follow *Robinson*. Nonetheless, to preserve his right to file a petition for review with the California Supreme Court that seeks reversal of the *Robinson* decision (for the reasons suggested in Justice Moreno’s dissenting opinion), as well as his right to file a federal habeas petition, Redix does not concede *Robinson* is correct and does not withdraw his notice of appeal.

In light of the holding in *Robinson, supra*, 47 Cal.4th 1104, which rejects on the merits the identical arguments made by Redix in this appeal, and notwithstanding our serious doubt as to the propriety of Redix’s appeal in the absence of a certificate of probable cause, we affirm the judgment and, in a separate order, summarily deny the petition for writ of habeas corpus.

DISPOSITION

The judgment is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.